

Attachment 1



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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July 6, 2006

Mr. Michael J. Messier
10 Hill Pond Road
Rutland, VT 05701

RE: FOIA Appeal 6010069

Dear Mr. Messier:

By letter dated June 2, 2006 you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your above-referenced Freedom of Information Act (FOIA) request.

Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I affirm the FOIA Officer's decision to withhold responsive information contained in Commission recall file RP060029. The FOI Officer's decision to withhold them was legally correct and I must affirm it based on FOIA Exemptions 3 and 5. 5 U.S.C. § 552(b)(3) and (b)(5).

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld files, I am relying on Sections 6(a)(2) and (b)(1) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(a)(2), (b)(1).

Section 6(a)(2) of the CPSA, incorporating FOIA Exemption 4, expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The information being withheld pursuant to Exemption 3, relying on section 6(a)(2), consists of confidential business information, including proprietary sales data, technical photographs, customer complaint information, and supplier and distributor information contained in Dell's section 15(b) report and subsequent correspondence with Commission staff.

Section 6(b)(1) of the CPSA requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]."

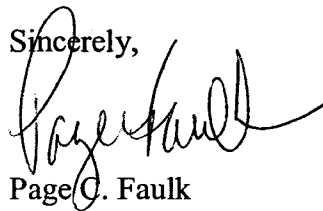
I affirm the FOIA Officer's decision to withhold CPSC staff electronic mail messages and correspondence with Dell, including proposed draft press releases, pursuant to FOIA Exemption 3 and section 6(b)(1). The Commission has determined that that release of this kind of information would not be "fair in the circumstances." *See*, 16 C.F.R. § 1101.33(b).

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents which would not be available by law to a party in litigation with the agency. 5 U.S.C. § 552(b)(5). The preliminary internal draft staff memorandum and internal note withheld here consist of staff recommendations, containing both pre-decisional and deliberative discussions. The deliberative process privilege protects advice, recommendations, and opinions that are part of the agency's deliberative, consultative and decision-making processes. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. Release of this information would impair the Commission's decision-making ability with respect to product investigations by impairing open and frank communication within the agency.

Finally, I note that you appeal the decision of the FOI Officer requiring you to pay search and/or review charges for your request. The FOI Officer's May 5, 2005 letter documents the waiver of such charges in this instance. Therefore, I have not reconsidered that waiver with this appeal.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Page C. Faulk